



United States
Department of
Agriculture

Food and
Consumer
Service

Mountain
Plains
Region

1244 Speer Blvd., Suite 903
Denver, CO 80204-3585

Reply to SP 96-04

Attn. of: [REDACTED]
SFSP -279

NOV 22 1995

Subject: Nonprocurement Debarment and Suspension Regulation

To: STATE AGENCY DIRECTORS (Child Nutrition Programs) - Colorado ED, Colorado DPHE, Colorado HS, Iowa, Kansas, Missouri ED, Missouri DH, Montana OPI, Montana DPHHS, Nebraska ED, Nebraska SS, North Dakota, South Dakota, Utah, Wyoming ED, Wyoming DHSS

On October 13, 1994 the Federal Acquisition Act of 1994 (P.L. 103-355) was signed into law. It amended 41 U.S.C. 253(g) to require the Federal Acquisition Regulations to provide for simplified procedures for purchasing property and services when the "simplified acquisition threshold" is not exceeded. The Act amended 41 U.S.C. 403 (11) to read: "The term 'simplified acquisition threshold' means \$100,000." Before the change, 41 U.S.C. 253(g) set the "small purchase threshold" at \$25,000.

The change in the small purchase threshold affects the Nonprocurement Debarment and Suspension Regulation found at 7 C.F.R. Part 3017.110(a)(1)(ii)(B). It defines a lower-tier covered transaction to be "Any procurement transaction ... expected to equal or exceed the Federal procurement small purchase threshold fixed in 10 U.S.C. 2304(g) and 41 U.S.C. 253(g). While these citations do not include the U.S. Code provision, 41 U.S.C. 403(11), which defines the "simplified acquisition threshold," the citations found in Part 3017 are inherently linked to the new definition. The lower-tier threshold of \$100,000 became effective on October 13, 1994.

It should be noted, however, that the threshold does not apply to procurement contracts, regardless the amount, involving principal investigators or providers of federally required audit services.

This memoranda revises the policies outlined in SP 94-C-2 (November 8, 1993), CACFP 384 (March 9, 1994) and SFSP 222 (March 9, 1994) for the School Nutrition Programs, Child and Adult Care Feeding Program and the Summer Food Service Program, respectively.

Please call the appropriate section if you have any questions or need further clarification.

Ann C. DeGroat

ANN C. DEGROAT
Regional Director
Child Nutrition Programs

tion. Thus in Rev. Rul. 74-14, 1974-1 C.B. 125, a public housing authority incorporated under a State statute conferring upon it the power to conduct examinations and investigations, to administer oaths, issue subpoenas, and make its findings and recommendations available to appropriate agencies was held not to qualify under IRC 501(c)(3) since its powers were deemed to be regulatory or enforcement powers. Compare, however, Rev. Rul. 74-15, 1974-1 C.B. 126, in which a public library organized as a separate entity under a State statute, without power to impose taxes for its operation but whose funds are obtained by certification of a tax rate needed for its operation to the rate making authority, was held to qualify for exemption under IRC 501(c)(3). In that case it was determined that the power regarding the tax rate was not a regulatory or enforcement power since it merely involved the determination subject to specified limits, of a tax rate necessary to support the library's operation.

(3) The power of eminent domain is not considered a governmental power. Therefore, a public hospital with the power to acquire property by eminent domain may qualify for exemption. Rev. Rul. 67-290, 1967-2 C.B. 183.

34(13) (3-12-92)

7751

Financial Support of Other Organizations

(1) Many charitable foundations do not engage in active charitable undertakings themselves, but rather assist the work of religious, charitable, educational, or similar organizations by contributing money to them. The foundation's funds may be dedicated to purposes as broad as, but no broader than, the purposes set out in IRC 501(c)(3). These foundations are charitable in the broad sense of that word.

(2) Some charitable foundations, whose names and work are widely known, have very large endowments and dispose of millions of dollars annually. There are, in addition, many foundations controlled by corporate and individual taxpayers who use them as channels for their charitable contributions. This form of indirect support of charity is itself a charitable activity justifying exemption. Rev. Rul. 67-149, 1967-1 C.B. 133.

(3) Similarly, an organization that owns and leases a building to the member agencies of a community chest may be exempt. Since the rentals are at rates substantially below fair rental value, it is a form of indirect support of charita-

ble activities and is therefore exempt. Rev. Rul. 69-572, 1969-2 C.B. 119.

(4) Charitable organizations may make distributions to nonexempt organizations. The funds must be used for specific projects that further the purposes of the charitable organization. Also, the charitable organization must retain discretion and control over the use of the funds and maintain records establishing that the funds are used for charitable purposes. Rev. Rul. 68-489, 1968-2 C.B. 210.

34(14) (8-9-94)

7751

United States Department of Agriculture Child and Adult Care Food Program (USDA CACFP)**34(14)10 (8-9-94)**

7751

Background

(1) Section 17 of the National School Lunch Act, as amended, at 42 U.S.C. § 1766, authorizes the U.S. Department of Agriculture (USDA) to carry on the Child and Adult Care Food Program (CACFP). The CACFP provides assistance to states through grants-in-aid and other means to initiate, maintain, and expand nonprofit food service programs for children or adult participants in nonresidential programs that provide care. In most states, the CACFP is administered by state agencies under USDA guidelines.

(2) The CACFP is available to public institutions, private entities exempt under IRC 501(c)(3), and proprietary family day care providers. However, non-exempt family day care providers may participate in the program only under the sponsorship of a "sponsoring organization" that is tax-exempt, or "moving towards that status" by filing an application for recognition of exemption with the Service.

(3) The "sponsoring organization" is responsible for

(a) submitting applications for participation or renewal in CACFP on behalf of sponsored day care providers;

(b) accepting final administrative and financial responsibility for program operations with respect to sponsored day care providers;

(c) monitoring the program at all facilities under its sponsorship;

(d) maintaining records required by USDA; and

MT 7751-93

34(14)10

IR Manual

(e) acting as "fiscal intermediary" for food service funds between the state agency and the sponsored day care provider.

(4) The "sponsoring organization" must

(a) conduct pre-approval visits to each provider;

(b) verify that the proposed food services do not exceed the providers capability;

(c) provide training for the providers in their responsibilities under CACFP; and

(d) review operations to assess compliance with CACFP at least three times a year.

(5) Sponsoring organizations receive the following payments under the CACFP program:

(a) payment for meals (which they must pay over to sponsored providers) at a rate established by law;

(b) administrative payments, which may be the actual expenditures for cost of administering the program or the amount of administrative costs approved by the state agency; and

(c) one-time start-up payments to develop or expand successful CACFP operations in day care homes.

34(14)11 (8-9-94)

7751

Requirements for Exemption for Sponsoring Organizations

(1) Based on the statutory recognition of the role played by the sponsoring organizations in administering CACFP, nonprofit organizations have been recognized as tax-exempt, on an individual basis, as organizations lessening the burdens of government.

(2) Rev. Rul. 81-276, 1981-2 C.B. 128, concludes that a professional standards review organization (PSRO) qualifies for exemption under IRC 501(c)(3), because it "lessens the burdens of government" and promotes health. The ruling reasons that the PSRO's assume the government's burden of reviewing the professional activities of health care practitioners and institutions to ensure they are appropriate for Medicare and Medicaid reimbursement. Similarly sponsoring organizations, by ensuring that only nutritionally appropriate meals are provided to eligible persons in the sponsored day care homes, promote the health of program beneficiaries; and, by assuming the government's burden of reviewing the appropriateness of services provided under CACFP, lessen the burdens of government.

(3) A "sponsoring organization" does not qualify for exemption merely because its activities further exempt purposes. Such organizations must be organized and operated for public purposes rather than private benefit. Many "sponsoring organizations" applying for recognition of exemption are essentially one-person operations. The principal whose compensation is the organization's primary expense is also its principal officer and director. Other board members and employees may be members of the principal's family. Such organizations operate primarily for non-exempt private purposes, rather than exclusively for public purposes. See, e.g., Rev. Rul. 69-545, 1969-2 C.B. 177; compare Rev. Rul. 55-656, 1955-1 C.B. 262 (community nursing bureau qualified for exemption under IRC 501(c)(3)), with Rev. Rul. 61-170, 1961-2 C.B. 112 (private duty nurses; registry distinguished from community nursing bureau on basis that public control and support of latter demonstrated operation for public vs. private benefit).

(4) Sponsoring organization may also be created and controlled by the day care providers they sponsor, to enable the providers to participate in CACFP. Like employee-dominated sponsoring organizations, provider-dominated sponsoring organizations are not operated exclusively for exempt public purposes.

(5) Sponsoring organizations may not operate exclusively for exempt purposes, for other reasons. For example, organizations that refuse to sponsor state licensed or federally qualified day care providers who comply with program requirements, because of their income or education levels, are not operated exclusively to further exempt purposes. Also, some individuals have formed multiple sponsoring organizations in order to increase the amount of reimbursement received under CACFP; and such activities do not further exempt purposes.

(6) To qualify for exemption under IRC 501(c)(3), a sponsoring organization must meet the following criteria:

(a) Its governing body should be composed primarily of members of the community who are not financially interested in its activities (i.e., persons other than employees of the organization or sponsored day care providers) or related parties.

(b) Members of the governing body should not vote on decisions relating to their own compensation (or for a related party).

(c) Decisions about compensation of employees and other parties providing services to the organization should be made by the governing body.

(d) No person receiving compensation for services under CACFP may receive compensation for services from any other sponsoring organization; and

(e) Sponsoring organizations should accept any qualified day care provider, consistent with their capacity to provide services to sponsored providers.

(7) See text 428.3:(6), IRM 7752, regarding the treatment of payments under CACFP for private foundation classification purposes.

(8) See IRM 7600 for paragraphs required for determination letters to sponsoring organizations.

350 (4-28-77)

7751

Scientific Organizations

351 (4-28-77)

7751

General

(1) The term "scientific" is not one that can be defined with precision. Many pursuits may be described as either scientific or educational or

both. An organization engaged in surveying scientific and medical literature and abstracting and publishing it free of charge was held to be exempt because it was engaged in the advancement of education and science. Rev. Rul. 66-147, 1966-1 C.B. 137.

(2) In another case, an organization carrying on research and disseminating knowledge in the field of the social sciences was held to be educational and scientific. It performed a substantial part of its research under contract from government agencies and devoted the proceeds to additional research. It performed no contract research for private individuals or organizations. Rev. Rul. 65-60, 1965-1 C.B. 231.

(3) An organization engaged in nonprofit research on human diseases, developing scientific methods for treatment, and disseminating its results through physicians' seminars was held to be exempt as an educational organization. It planned to make the results of its research, including patents, formulas, etc., generally available to the public. The organization derived its financial support primarily from the donations and registration fees of the participants in its seminars. Rev. Rul. 65-298, 1965-2 C.B. 163.